

1 CENTER FOR DISABILITY ACCESS
2 Amanda Seabock, Esq., SBN 289900
3 Chris Carson, Esq., SBN 280048
4 Dennis Price, Esq., SBN 279082
5 Mail: PO Box 262490
6 San Diego, CA 92196-2490
7 Delivery: 9845 Erma Road, Suite 300
8 San Diego, CA 92131
9 (858) 375-7385; (888) 422-5191 fax
10 amandas@potterhandy.com

11 Attorneys for Plaintiff

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15
16 **Samuel Love,**

17 Plaintiff,

18 v.

19 **Carl Acquistapace**, in individual
20 and representative capacity as
21 trustee of The Carl and Marilyn
Acquistapace 2014 Living Trust;
Marilyn Acquistapace, in
individual and representative
capacity as trustee of The Carl and
Marilyn Acquistapace 2014 Living
Trust;
Muhammad Musa; and Does 1-
10,

22 Defendants.

23
24 **Case No.**

25 **Complaint For Damages And
Injunctive Relief For Violations
Of:** American's With Disabilities
Act; Unruh Civil Rights Act

26 Plaintiff Samuel Love complains of Carl Acquistapace, in individual and
27 representative capacity as trustee of The Carl and Marilyn Acquistapace 2014
28 Living Trust; Marilyn Acquistapace, in individual and representative capacity
as trustee of The Carl and Marilyn Acquistapace 2014 Living Trust;
Muhammad Musa; and Does 1-10 ("Defendants"), and alleges as follows:

1 **PARTIES:**

2 1. Plaintiff is a California resident with physical disabilities. He is
3 substantially limited in his ability to walk. He is a paraplegic who uses a
4 wheelchair for mobility.

5 2. Defendant Carl Acquistapace, in individual and representative capacity
6 as trustee of The Carl and Marilyn Acquistapace 2014 Living Trust, owned the
7 real property located at or about 2134 MacDonald Avenue, Richmond,
8 California, in March 2019.

9 3. Defendant Marilyn Acquistapace, in individual and representative
10 capacity as trustee of The Carl and Marilyn Acquistapace 2014 Living Trust,
11 owned the real property located at or about 2134 MacDonald Avenue,
12 Richmond, California, in March 2019.

13 4. Defendant Carl Acquistapace, in individual and representative capacity
14 as trustee of The Carl and Marilyn Acquistapace 2014 Living Trust, owns the
15 real property located at or about 2134 MacDonald Avenue, Richmond,
16 California, currently.

17 5. Defendant Marilyn Acquistapace, in individual and representative
18 capacity as trustee of The Carl and Marilyn Acquistapace 2014 Living Trust,
19 owns the real property located at or about 2134 MacDonald Avenue,
20 Richmond, California, currently.

21 6. Defendant Muhammad Musa owned Tire Depot located at or about
22 2134 MacDonald Avenue, Richmond, California, in March 2019.

23 7. Defendant Muhammad Musa owns Tire Depot located at or about 2134
24 MacDonald Avenue, Richmond, California, currently.

25 8. Plaintiff does not know the true names of Defendants, their business
26 capacities, their ownership connection to the property and business, or their
27 relative responsibilities in causing the access violations herein complained of,
28 and alleges a joint venture and common enterprise by all such Defendants.

1 Plaintiff is informed and believes that each of the Defendants herein,
2 including Does 1 through 10, inclusive, is responsible in some capacity for the
3 events herein alleged, or is a necessary party for obtaining appropriate relief.
4 Plaintiff will seek leave to amend when the true names, capacities,
5 connections, and responsibilities of the Defendants and Does 1 through 10,
6 inclusive, are ascertained.

7

8 **JURISDICTION & VENUE:**

9 9. The Court has subject matter jurisdiction over the action pursuant to 28
10 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
11 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

12 10. Pursuant to supplemental jurisdiction, an attendant and related cause
13 of action, arising from the same nucleus of operative facts and arising out of
14 the same transactions, is also brought under California's Unruh Civil Rights
15 Act, which act expressly incorporates the Americans with Disabilities Act.

16 11. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
17 founded on the fact that the real property which is the subject of this action is
18 located in this district and that Plaintiff's cause of action arose in this district.

19

20 **FACTUAL ALLEGATIONS:**

21 12. Plaintiff went to Tire Depot in March 2019 with the intention to avail
22 himself of its goods or services and to assess the business for compliance with
23 the disability access laws.

24 13. Tire Depot is a facility open to the public, a place of public
25 accommodation, and a business establishment.

26 14. Parking spaces are one of the facilities, privileges, and advantages
27 offered by Defendants to patrons of Tire Depot.

28 15. Unfortunately, on the date of the plaintiff's visit, the defendants did not

1 provide accessible parking in conformance with the ADA Standards.

2 16. Currently, the defendants do not provide accessible parking in
3 conformance with the ADA Standards.

4 17. Plaintiff personally encountered this barrier.

5 18. By failing to provide accessible parking, the defendants denied the
6 plaintiff full and equal access.

7 19. The lack of accessible parking created difficulty and discomfort for the
8 Plaintiff.

9 20. Sales counters are one of the facilities, privileges, and advantages
10 offered by Defendants to patrons of Tire Depot.

11 21. Unfortunately, and even though the plaintiff did not encounter the
12 barrier, the defendants do not provide an accessible sales counter in
13 conformance with the ADA Standards.

14 22. Restrooms are one of the facilities, privileges, and advantages offered
15 by Defendants to patrons of Tire Depot.

16 23. Unfortunately, the defendants do not provide an accessible restroom in
17 conformance with the ADA Standards.

18 24. The defendants have failed to maintain in working and useable
19 conditions those features required to provide ready access to persons with
20 disabilities.

21 25. The barriers identified above are easily removed without much
22 difficulty or expense. They are the types of barriers identified by the
23 Department of Justice as presumably readily achievable to remove and, in fact,
24 these barriers are readily achievable to remove. Moreover, there are numerous
25 alternative accommodations that could be made to provide a greater level of
26 access if complete removal were not achievable.

27 26. Plaintiff will return to Tire Depot to avail himself of goods or services
28 and to determine compliance with the disability access laws once it is

1 represented to him that Tire Depot and its facilities are accessible. Plaintiff is
2 currently deterred from doing so because of his knowledge of the existing
3 barriers and his uncertainty about the existence of yet other barriers on the
4 site. If the barriers are not removed, the plaintiff will face unlawful and
5 discriminatory barriers again.

6 27. Given the obvious and blatant nature of the barriers and violations
7 alleged herein, the plaintiff alleges, on information and belief, that there are
8 other violations and barriers on the site that relate to his disability. Plaintiff will
9 amend the complaint, to provide proper notice regarding the scope of this
10 lawsuit, once he conducts a site inspection. However, please be on notice that
11 the plaintiff seeks to have all barriers related to his disability remedied. See
12 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
13 encounters one barrier at a site, he can sue to have all barriers that relate to his
14 disability removed regardless of whether he personally encountered them).

15

16 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
17 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
18 Defendants.) (42 U.S.C. section 12101, et seq.)

19 28. Plaintiff re-pleads and incorporates by reference, as if fully set forth
20 again herein, the allegations contained in all prior paragraphs of this
21 complaint.

22 29. Under the ADA, it is an act of discrimination to fail to ensure that the
23 privileges, advantages, accommodations, facilities, goods and services of any
24 place of public accommodation is offered on a full and equal basis by anyone
25 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
26 § 12182(a). Discrimination is defined, *inter alia*, as follows:

27 a. A failure to make reasonable modifications in policies, practices,
28 or procedures, when such modifications are necessary to afford

1 goods, services, facilities, privileges, advantages, or
2 accommodations to individuals with disabilities, unless the
3 accommodation would work a fundamental alteration of those
4 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

5 b. A failure to remove architectural barriers where such removal is
6 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
7 defined by reference to the ADA Standards.
8 c. A failure to make alterations in such a manner that, to the
9 maximum extent feasible, the altered portions of the facility are
10 readily accessible to and usable by individuals with disabilities,
11 including individuals who use wheelchairs or to ensure that, to the
12 maximum extent feasible, the path of travel to the altered area and
13 the bathrooms, telephones, and drinking fountains serving the
14 altered area, are readily accessible to and usable by individuals
15 with disabilities. 42 U.S.C. § 12183(a)(2).

16 30. When a business provides parking for its customers, it must provide
17 accessible parking in compliance with the ADA Standards.

18 31. Here, the lack of accessible parking in compliance with the ADA
19 Standards is a violation of the law.

20 32. When a business provides a sales counter for its customers, it must provide
21 an accessible sales counter in compliance with the ADA Standards.

22 33. Here, the lack of a sales counter in compliance with the ADA Standards
23 is a violation of the law.

24 34. When a business provides a restroom for its customers, it must provide
25 an accessible restroom in compliance with the ADA Standards.

26 35. Here, the lack of an accessible restroom in compliance with the ADA
27 Standards is a violation of the law.

28 36. The Safe Harbor provisions of the 2010 Standards are not applicable

1 here because the conditions challenged in this lawsuit do not comply with the
2 1991 Standards.

3 37. A public accommodation must maintain in operable working condition
4 those features of its facilities and equipment that are required to be readily
5 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

6 38. Here, the failure to ensure that the accessible facilities were available
7 and ready to be used by the plaintiff is a violation of the law.

8

9 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
10 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
11 Code § 51-53.)

12 39. Plaintiff repleads and incorporates by reference, as if fully set forth
13 again herein, the allegations contained in all prior paragraphs of this
14 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,
15 that persons with disabilities are entitled to full and equal accommodations,
16 advantages, facilities, privileges, or services in all business establishment of
17 every kind whatsoever within the jurisdiction of the State of California. Cal.
18 Civ. Code § 51(b).

19 40. The Unruh Act provides that a violation of the ADA is a violation of the
20 Unruh Act. Cal. Civ. Code, § 51(f).

21 41. Defendants’ acts and omissions, as herein alleged, have violated the
22 Unruh Act by, *inter alia*, denying, or aiding, or inciting the denial of, Plaintiff’s
23 rights to full and equal use of the accommodations, advantages, facilities,
24 privileges, or services offered.

25 42. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
26 discomfort or embarrassment for the plaintiff, the defendants are also each
27 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
28 (c).)

1 **PRAYER:**

2 Wherefore, Plaintiff prays that this Court award damages and provide
3 relief as follows:

4 1. For injunctive relief, compelling Defendants to comply with the
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
6 plaintiff is not invoking section 55 of the California Civil Code and is not
7 seeking injunctive relief under the Disabled Persons Act at all.

8 2. Damages under the Unruh Civil Rights Act, which provides for actual
9 damages and a statutory minimum of \$4,000 for each offense.

10 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
11 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

12

13 Dated: April 4, 2019

 CENTER FOR DISABILITY ACCESS

14 By:



15

16

17 Amanda Seabock, Esq.
 Attorney for plaintiff